

Remarks

Claims 1-29 and 34-36 are pending in the application. Claims 1-29 and 34-36 have been canceled, and new claims 37-42 are added herein. The Applicant thanks the Examiner for the courtesies extended to Applicant's representative in the telephonic interview conducted October 23, 2006. No agreement was reached in the interview regarding the patentability of the pending claims or the propriety of the claim rejections in view of the cited references.

I. New Claims 37-41 are Patentable Over the Prior Art

The Applicant believes that new claims 37-42 each recite one or more limitations that are neither taught nor suggested by the prior art of record. Regarding now-canceled claims 1-29 and 34-36 under 35 USC 103(a), the Office Action states that "the recited features are largely aesthetic and therefore subject to obviousness based on design choices." As discussed below, the Applicant believes that the novel features recited in the claims are functional, and are not largely aesthetic.

The Federal Circuit Court of Appeals has made clear that a product that simulates something it is not has "utility" within the meaning of the Patent Statute. In *Juicy Whip, Inc. v. Orange Bang, Inc.*, the Federal Circuit concluded that "[i]t is not at all unusual for a product to be designed to appear to viewers to be something it is not," and an invention that "makes such imitation possible has 'utility' within the meaning of the patent statute." 51 USPQ2d 1700, 1703 (Fed. Cir. 1999). The Court further concluded that "[m]uch of the value of such products resides in the fact that they appear to be something they are not." *Id.* Accordingly, those visible features of a claimed structure that make intended imitation possible are functional, and not merely aesthetic or decorative.

New independent Claim 37 recites a metal overhead sectional garage door that includes a top edge, a bottom edge, and a plurality of pivotally connected horizontal door sections that each include a continuous sheet metal face panel. The door further includes a plurality of narrow vertical grooves integrally formed in the continuous sheet metal face panels that align with each

other to form a narrow vertical recess that continuously extends between the top edge and the bottom edge of the door when the door is in a closed position. The narrow vertical recess simulates a narrow vertical interstice between a left garage door portion having the simulated appearance of a left upright door panel, and a right garage door portion having the simulated appearance of a right upright door panel. Accordingly, the recited vertical grooves and vertical recess are not aesthetic, ornamental, or decorative features that merely enhance the aesthetic appeal of a garage door. To the contrary, the recited features function to cause a lightweight metal overhead door wholly constructed of horizontal sections to appear to be something very different, i.e., a plurality of upright door panels.

Unlike conventional metal garage doors like that shown in published U.S. Pat.

Application No. 10/078,031 by **Leist** et al. (Publication No. US 2002/0179255), the claimed door has left and right portions that clearly are defined by a continuous thin vertical recess that extends substantially continuously between the top edge and the bottom edge of the door. The continuous vertical recess of Claim 37 functions to interrupt or break the horizontal expanse of a conventional metal garage door like that shown in **Leist**, regardless of any type of aesthetic ornamentation or decoration provided on the simulated left and right upright door panels. None of the prior art of record teaches or suggests a metal garage door with such an integrally formed thin vertical recess. At least for this reason, the Applicant believes that independent Claim 37 and dependent Claims 38 and 39 are patentable over the prior art.

New independent Claim 40 recites a metal overhead sectional garage door comprising a plurality of pivotally connected horizontal door sections. Each door section includes a continuous sheet metal face panel. A plurality of embossed patterns integrally formed in at least a portion of the sheet metal face panels define at least one simulated wooden crossbuck frame member. The function of the simulated wooden crossbuck frame member is not largely aesthetic. To the contrary, the simulated wooden crossbuck frame member functions to cause the metal overhead sectional garage door to appear to viewers to be something it is not – a wooden door with a wooden crossbuck frame member. None of the prior art of record teaches or suggests a metal garage door with an integrally formed simulated wooden crossbuck frame

member. At least for this reason, the Applicant believes that independent Claim 40 and dependent Claims 41 and 42 are patentable over the prior art.

Conclusion

The Applicant believes that claims 37-42 are in condition for immediate allowance, and such action is respectfully requested. If any issue remains unresolved, Applicant's attorney welcomes a telephone call from the Examiner to expedite allowance of the claims.

Respectfully submitted,



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